

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 99-4158

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United States of America,

Appellee,

v.

Noel Flores-Garcia,

Appellant.

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Appeal from the United States  
District Court for the  
Southern District of Iowa

[UNPUBLISHED]

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Submitted: August 7, 2000

Filed: August 14, 2000

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Before McMILLIAN, BRIGHT, and FAGG, Circuit Judges.

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PER CURIAM.

Noel Flores-Garcia appeals from the final judgment entered in the District Court<sup>1</sup> for the Southern District of Iowa upon his guilty plea to a charge of illegal re-entry into the United States after deportation, in violation of 8 U.S.C. § 1326. The district court sentenced appellant to fifty-seven months imprisonment and two years supervised release. On appeal, appellant's counsel has filed a brief and moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). For reversal, appellant argues

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<sup>1</sup>The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

that the district court should have granted him a downward departure on the grounds of cultural assimilation and disparate treatment of deportable aliens, and that he was not advised of his right under the Vienna Convention on Consular Relations to contact his consul. For the reasons discussed below, we affirm the judgment of the district court.

We are satisfied from our review of the record that the district court recognized its authority to depart from the Guidelines on the grounds asserted by Flores-Garcia, and its discretionary decision not to depart is therefore unreviewable. See United States v. Turechek, 138 F.3d 1226, 1228 (8th Cir. 1998). The failure to advise Flores-Garcia of his right under the Vienna Convention is not a jurisdictional defect and was therefore foreclosed by his guilty plea. See United States v. Guzman-Landeros, 207 F.3d 1034, 1035 (8th Cir. 2000) (per curiam).

We have reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), and we have found no nonfrivolous issues. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.